BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SETH E. TUCKER	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,951
ADECCO EMPLOYMENT SERVICES	)	
Respondent	)	
AND	)	
	)	
INSURANCE CO. STATE OF PENNSYLVANIA	)	
Insurance Carrier	)	

ORDER

Claimant appealed from a March 9, 2000 preliminary hearing Order denying compensation entered by Administrative Law Judge Steven J. Howard.

ISSUES

The parties agree that claimant sustained an accidental injury on August 18, 1999 that arose out of and in the course of his employment with respondent. The Administrative Law Judge nevertheless denied claimant's request for additional medical treatment because claimant failed to prove his current complaints and need for medical treatment are related to that injury. Accordingly, the issue is causation and, more specifically, whether claimant's present need for medical treatment is the result of an accidental injury that arose out of and in the course of his employment with respondent.

Respondent argues this issue is not jurisdictional and that review by the Board is not appropriate.

FINDINGS OF FACT

Claimant was injured on August 18, 1999 when his left hand was jerked into a bandsaw, lacerating the left ring finger. Respondent provided medical treatment at the Mount Carmel Medical Center emergency room and subsequently at the Occupational Health Clinic in Pittsburg, Kansas. Claimant was off work for about six days due to his injury. Thereafter he continued working for respondent until September 25, 1999 when he went to work for another employer doing a heavier and repetitive type of work. Claimant did not seek medical treatment from respondent again until after he was referred by his attorney to orthopedic surgeon Edward J. Prostic, M.D., who examined claimant on

November 22, 1999. Based upon complaints of numbness and tingling in his hand, Dr. Prostic diagnosed carpal tunnel syndrome and recommended "injection of cortisone to the carpal canal and splintage or EMG and possible surgery."

Before his examination by Dr. Prostic, there is no record that claimant ever told any of the doctors or nurses that he had numbness or tingling in his hand. To the contrary, the treatment records placed into evidence at the preliminary hearing are silent as to any such complaints.

On January 6, 2000 claimant served respondent with his 7-day demand letter seeking medical treatment based upon Dr. Prostic's report.

In his brief to the Board, claimant alleges injury to his left hand each and every working day during the course of his employment with respondent beginning August 18, 1999 and ending on his last day of employment, September 25, 1999. Both the form E-1 filed January 3, 2000 and the form E-3 Application for Preliminary Hearing, however, allege a single accident date of August 18, 1999. There was no request to amend the date or dates of accident at the preliminary hearing to allege a series of accidents or a repetitive use injury.

CONCLUSIONS OF LAW

An ALJ's preliminary award under K.S.A. 1999 Supp. 44-534a is not subject to review by the Board unless it is alleged that the ALJ exceeded his or her jurisdiction in granting the preliminary hearing benefits.[1] "A finding with regard to a disputed issue of whether the employee suffered an accidental injury, [and] whether the injury arose out of and in the course of the employee's employment . . . shall be considered jurisdictional, and subject to review by the board."[2] Whether claimant's condition and present need for medical treatment is due to the work-related accident or whether claimant suffered a subsequent intervening injury gives rise to an issue of whether claimant's current condition arose out of and in the course of his prior employment with respondent. This issue is jurisdictional and may be reviewed by the Board on an appeal from a preliminary hearing order.

Respondent, in its letter brief to the Board, erroneously states that "[t]he test on appeal is whether the record contains any substantial, competent evidence that supports the judge's findings. Further, when analyzing whether there is competent evidence to support a finding, the record is to be viewed in the light most favorable to the prevailing

---

[1] K.S.A. 1999 Supp. 44-551(b)(2)(A).

[2] K.S.A. 1999 Supp. 44-534a(a)(2).

party below." (Citations omitted.) To the contrary, it is well established that the Board conducts a *de novo* review on the record.[3]

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.[4] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."[5] The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.[6]

Claimant now attributes his left upper extremity numbness and tingling symptoms to the August 18, 1999 laceration of his left ring finger that occurred while working for respondent. But the only medical evidence relating his symptoms to that work-related injury is from a physician that did not examine claimant until almost two months after claimant left work for the respondent and went to work for two subsequent employers. As the ALJ noted:

> "a. Claimant testifies he currently grips and grasps 3,000 doors per week with no increase in his symptoms.
>
> "b. Claimant experiences symptoms bilaterally although the laceration was limited to only one side thereby raising the issue if there is a causal connection between his current condition and the laceration.
>
> "c. Claimant has testified his short employment with Acme Brick increased his symptoms."

Because of the inconsistent histories and an onset of symptoms that seemingly post date claimant's employment with respondent, the Appeals Board finds that claimant has failed to carry his burden of proving his entitlement to the requested benefits. Based upon the record compiled to date, the Administrative Law Judge's denial of an award for preliminary benefits should be affirmed.

---

[3] K.S.A. 1999 Supp. 44-555c(a); Helms v. Pendergast, 21 Kan. App. 2d 303, 309, 899 P.2d 501 (1995).

[4] K.S.A. 1999 Supp. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

[5] K.S.A. 1999 Supp. 44-508(g). See also *In re* Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

[6] K.S.A. 1999 Supp. 44-501(g).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 14, 2000 Order by Administrative Law Judge Steven J. Howard, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Michelle Daum Haskins, Kansas City, MO
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director